No. 93-220

Supreme Court, U.S.
OCT - 6 1993

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

DUPHAR, B.V.,

Petitioner,

—against—

KATHY D. TOBIN,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RICHARD J. UROWSKY
Counsel of Record for Petitioner

SULLIVAN & CROMWELL
125 Broad Street
New York, New York 10004
(212) 558-4000

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The question presented by petitioner Solvay Duphar, B.V. ("Duphar") in its "Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit" (the "Petition"), as respondent Kathy D. Tobin concedes in "Respondent's Brief in Opposition" ("Brief in Opposition"), is an "important" question as to the constitutional limits of a federal court's *in personam* jurisdiction over an alien defendant. (Petition at 7-11; Brief in Opposition at 4.)

As set forth in Duphar's Petition, this case raises the significant constitutional issue of whether, in an action upon state law claims, jurisdiction over an alien defendant may be based solely on a stream of commerce theory plus the defendant's *national* contacts with the United States. (*See*

Petition at 7-11; *compare Burger King* v. *Rudzewicz*, 471 U.S. 462, 474 (1985) (requiring contacts with the forum state) *with Asahi Metal Industry Co.* v. *Superior Court*, 480 U.S. 102, 113 n.* (1987) (leaving open the issue of whether Congress may provide for jurisdiction, in an action upon a federal claim, over alien defendants based on aggregate national contacts).)

Plaintiff takes the surprising position for the first time in these proceedings that the underlying jurisdictional issue is effectively moot because the judgment of liability entered against Astra Pharmaceutical Products, Inc. ("Astra") in the District Court, as affirmed by the Court of Appeals, has already been satisfied by Astra. (Brief in Opposition at 3.) Plaintiff, however, offers no explanation for why Duphar's Petition, which concerns only Duphar's amenability to suit in the United States, has suddenly become moot because the judgment has been satisfied by Astra.

The only plausible interpretation of the Brief in Opposition is that plaintiff recognizes and concedes that no further claim for liability remains that is not precluded by the judgment of the District Court, as affirmed by the Court of Appeals. Plaintiff does not, however, say this. So long as plaintiff harbors any intention to press a claim against Duphar, however tenuous, for further damages, then the issues underlying Duphar's petition for a writ of certiorari are not moot.

In short, in the absence of a definitive statement establishing her claim of mootness, Duphar respectfully submits that the question presented remains ripe for review. Indeed, even plaintiff admits that this case presents an "important" jurisdictional issue that is otherwise appropriate for review. (*Id.* at 4.)

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

RICHARD J. UROWSKY
Counsel of Record for Petitioner

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125 Broad Street
New York, New York 10004
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